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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,238	03/09/2004	Mary Therese Jernigan	80041	2131

7590 09/26/2006

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EXAMINER	
BOYKIN, TERRESSA M	

ART UNIT	PAPER NUMBER
1711	

DATE MAILED: 09/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/796,238	JERNIGAN ET AL.	
	Examiner	Art Unit	
	Terressa M. Boykin	1711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 June 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-16 and 40-65* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-16 and 40-65* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *1/06;3/06;4/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-16 and 40-65 are rejected under 35 U.S.C. 102(b) as being anticipated by USP 5656221 (DE 19503053) see abstract and claims (as noted in applicants NPL report filed 4-25-6).

The reference USP 5656221 (DE 19503053) discloses a process for the reduction of the free aldehyde content in a polyester melt during production of shaped polyester food packaging material which does not affect taste of the food, the steps of which are carried out as polyester in the melt phase flows directly from a poly-condensation reactor to a shaping apparatus, said polyester having at least 70 wt % ethylene glycol units based on the total diol units, said process comprising

(a) providing a polyester melt which contains, in addition to conventional reaction catalysts, an added 5-120 ppm of a) cobalt or b) cobalt and manganese in a molar ratio of 1:1 to 3:1 and c) phosphorus in a molar amount equal to or twice the molar amount of cobalt, each in the form of their polyester-soluble compounds,

(b) introducing an inert gas through a gas inlet and uniformly distributing said inert gas into said polyester melt immediately after leaving said polycondensation reactor in an amount, by weight, not in excess of the amount of polyester by weight to reduce the free aldehyde content of said polyester melt,

(c) adding from 0.05 to 1.0 wt % of a low-volatility acetaldehyde-reducing amide, said amide being added to the polyester melt through an inlet next to said inert gas inlet,

(d) vacuum degassing said polyester melt immediately before entering said shaping apparatus,

(e) sending said degassed polyester melt to said shaping apparatus for processing into said shaped polyester food packaging, and

(f) maintaining the temperature of said polyester melt at not more than 35 deg. C. above the crystallite melting point for a maximum dwell time of 30 minutes between steps (b) to (e).

The method provides the production of polyester packaging with a low acetaldehyde content direct from the reactor without intermediate granulation and without adding acetaldehyde-binding amide in amts. sufficient to affect other properties, especially with regard to transparency.

The final product may be used for the production of low-aldehyde polyester packaging, such as food packaging.

As noted above, the reference discloses a continuous process for the reduction of the free aldehyde content in a polyester melt during production of shaped polyester food packaging material in which the material product as claimed would inherently anticipate that which is claimed by applicants and appears to result in a product the same characteristics. Thus, any properties or characteristics inherent in the prior art, e.g. it. viscosity, although unobserved or detected by the reference, would still anticipate the claimed invention. Note In re Swinehart, 169 USPQ 226. "It is elementary that the mere recitation of a newly discovered...property, inherently possessed by things in the prior art, does not cause claim drawn to those things ". Since the disclosed parameters, viscosity, clarity etc., are expressed differently , they nevertheless appear to overlap those claimed. In view of the above, there appears to be no significant difference between the reference and that which is claimed by applicant(s). Any differences not specifically mentioned appear to be conventional. Consequently, the claimed invention cannot be deemed as novel and accordingly is unpatentable.

Conclusion:

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Terressa M. Boykin whose telephone number is 571 272-1069. The examiner can normally be reached on Monday-Thursday 10-5:30 Friday (work at home).

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Terressa M. Boykin
Primary Examiner
Art Unit 1711

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